No. .....

In the Supreme Court of the United States,

October Term 18....

THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

MOTION TO DISMISS WRIT OF ERROR.

This suit was instituted by the State of Texas through its attorney-general in the district court of Travis county, Texas, on the 5th day of December, 1894, alleging substantially the following facts:

1st. That the defendant company is incorporated under the general laws of the State of Texas.

2nd. Its general office and principal place of business is at Houston, Texas.

3rd. Its line of railroad runs into and through the county of Travis in the State of Texas.

4th. Its local agent at Austin, in said county, is H. D. Patrick.

5th. The State of Texas made loans under the provisions of an act entitled "An act to provide for the investment of the

special school fund in the bonds of railroads incorporated by the State," approved August 12th, 1856, to the Houston and Texas Central Railway Company, as follows:

On April 13, 1857, one hundred and fifty thousand dollars;
On October 28, 1857, sixty thousand dollars;
On May 21, 1858, sixty thousand dollars;
On July 6, 1858, thirty thousand dollars;
On February 23, 1859, thirty thousand dollars;
On June 15, 1859, thirty thousand dollars;
On July 22, 1859, thirty thousand dollars;
On August 2, 1859, thirty thousand dollars;
On August 20, 1859, thirty thousand dollars;

and said company executed, delivered to the State of Texas, in consideration of said loans, bonds as follows:

One dated March 25, 1857, for one hundred and fifty thousand dollars;
One dated September 22, 1857, for sixty thousand dollars;
One dated January 28, 1858, for thirty thousand dollars;
One dated February 23, 1858, for thirty thousand dollars;
One dated February 23, 1858, for thirty thousand dollars;
One dated January 25, 1859, for thirty thousand dollars;
One dated May 14, 1859, for thirty thousand dollars;
One dated ...., 1859, for thirty thousand dollars;
One dated June 2, 1859, for thirty thousand dollars;
One dated July 29, 1859, for thirty thousand dollars;

said bonds being to the effect that said company would pay to the State of Texas, at the office of its treasurer in the city of Austin, ten years from the respective dates of said bonds, the said several sums of money, would pay each year two per cent of said several sums as sinking fund, and would pay interest on each of them at the rate of six per cent per annum, and said bonds expressly acknowledging the lien created by the act aforesaid to secure payment of loans made thereon.

By the loans aforesaid, and by the execution of said bonds, the said company became liable to pay, at the dates severally indicated, the several sums of money (principal, interest and sinking fund) mentioned, and the State, to secure payment of said sums, became thereby invested with the lien aforesaid.

6th. The State of Texas made, under the provisions of the act aforesaid, and of an act approved January 28th, 1856, a loan to the Washington County Railroad Company on June 29th, 1859, of sixty-six thousand dollars, and in consideration thereof the said company executed to the State its bond dated June 6th, 1859, to the effect that it would, ten years after the date thereof, pay to the State, at Austin, Texas, said sum, would pay, annually, two per cent thereof as a sinking fund, and would pay intesest thereon at the rate of six per cent per annum, and acknowledging the lien created by the act aforesaid.

By the said loan and the bond aforesaid, the said company promised and became liable to pay the same sum at the time indicated and the said sinking fund and interest, and the State became invested with the lien aforesaid.

7th. That on or before the 15th day of August, A. D. 1870, The Washington County Railway became consolidated with and merged into the Houston and Texas Central Railway, and said Houston and Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railway Company.

8th. That the bonds aforesaid were not paid according to their tenor and effect, and the property upon which the lien aforesaid attached became liable to sale.

9th. That prior to the 15th day of August, 1870, the Houston and Texas Central Railway Company had constructed on its main line railroad as follows: A line of railroad completely constructed, beginning at the original terminus of said road, on the left bank of Buffalo Bayou, in the city of Houston, in Harris county, Texas, and running thence, in a general northwesterly direction, through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls and Limestone, including the 1st, 2nd, 3rd, 4th, 5th and 6th sections of twenty-five miles each, to a point one hundred and fifty miles to the place of beginning, about three miles south of Kosse, in Limestone county.

10th. That prior to the 15th day of August, 1870, the Washington County Railway Company, and the Houston and Texas Central Railway Company, had constructed of what is now known as the Western Branch of the Houston and Texas Central Railroad as follows: A line of railroad beginning at the point

of junction of said Western Branch with the track of the main line of the Houston and Texas Central Railroad in the town of Hempstead, in Waller county; thence in a general westerly direction, through Waller and Washington counties for about twenty-one and one-quarter miles to a point in the town of Brenham, in Washington county.

11th. That under the terms of the said act of August 13th, 1856, and under the terms of the bonds aforesaid, a lien to secure payment of the said bonds attached to all of said road, viz: said one-hundred and fifty miles of the main line of the Houston and Texas Central Railway, and twenty-one and one-quarter miles of the Western Branch thereof, and to all charter rights of said company or companies, including the road-bed, right of way, grading, bridges, iron rails, equipments and masonry, and to all stock subscribed for in said company or companies, and upon all depots and depot stations, all the property owned by said company or companies as necessary for their business.

12th. That on the first day of May, 1870, the aggregate amount due upon the bonds executed by the Houston and Texas Central Railway Company, principal and interest, was the sum of Six Hundred and Fifty-seven Thousand, Three Hundred and Twenty-four and 35-100ths Dollars ($657,324.35).

13th. That on the 1st day of May, 1870, the aggregate amount due upon the bonds executed by the Washington County Railway Company, principal and interest, was the sum of One Hundred and Three Thousand, Eight Hundred and Forty and 1-100ths Dollars ($103,840.01).

14th. That the Houston and Texas Central Railway Company accepted the terms of the act of August 13th, 1870, entitled "An act for the relief of railroad companies indebted to the State for loans from the school fund," and thereby promised and became liable to pay, in addition to said sum of $657,324.35, and said sum of $103,840.01, semi-annually, on the 1st day of November and the 1st day of May of each year, six months' interest at six per cent per annum on said aggregate amounts, and in addition thereto on said dates, a sinking fund of one per cent of said amounts, in consideration of which promises the State by the terms of said law agreed not to

make sale of the property upon which its lien existed as long as said payments were made.

15th. That thereafter to May 1st, 1879, said semi-annual interest and sinking fund was paid by the Houston and Texas Central Railway Company upon said sum of $103,840.01; but that no payment of principal or interest was made on November 1st, 1879, nor within ten days thereafter, nor has any such payment been since made, and upon said failure to pay within ten days after the 1st day of November. A. D. 1879, the entire balance then remaining unpaid of said sum, amounting to $86,-655.90, became at once due and payable.

16th. That up to and including the 1st day of May, 1893, the said semi-annual interest and one per cent sinking fund was paid by said Houston and Texas Railway Company and defendant upon said sum of $657,324.35, but the next semi-annual interest and sinking fund was not paid, but the sum of $2,620 only was paid; the balance thereof was not paid, nor has it, or any part of it, since been paid; and upon said failure to pay within ten days after the 1st day of November, A. D. 1893, the entire balance of $411,935.84, remaining then unpaid of said sum of $657,324.35, became at once due and payable.

17th. That upon said sum of $86,655.90, there has become due each six months from said 1st day of May, 1879, up to the present time semi-annual interest at the rate of six per cent per annum, and there is due upon each of said installments of unpaid interest, interest from the date upon which they respectively became due at the rate up to July 1st, 1891, of eight per cent, and since then of six per cent.

18th. That upon said sum of $411,935.84, there has become due upon May 1st, 1894, semi-annual interest at the rate of six per cent per annum, and upon November 1, 1894, a like amount, and since those dates upon said unpaid installments of interest at six per cent.

19th. That upon the 1st day of July, A. D. 1886, all the property of the Houston and Texas Central Railway Company, including the property upon which the State has the lien aforesaid, was sold judicially, and the purchaser and his associates formed under the laws of this State the corporation herein styled defendant.

20th. That said Washington County and Houston and Texas Central Railway Companies are defunct; that their corporate existence has been terminated; that neither of them has a president, directors, or other officers or stockholders, or other representatives, upon whom service may be had, and that there is no way of bringing said defunct corporations before this court.

21st. That the Houston and Texas Central Railroad Company, defendant, claims as the legal owner (subject to the lien heretofore mentioned) and is in possession of all the property upon which the lien above set forth exists.

22nd. Plaintiff prays that judgment be given it that there is due upon the obligations aforesaid the sums of money heretofore stated with interest as set forth, and that payment thereof is secured by the liens on the property aforesaid; that said property be sold as under execution, and that the proceeds be applied to the payment of said sums with interest, and for costs; and that it have other relief, including the appointment of a receiver, as in the premises should be given."

To this defendant answered on the 6th day of February, 1895, and on May 15th, 1895, filed its first amended original answer, setting up the payment of certain amounts during the war between the States, in State treasury warrants, in addition to certain large cash payments therein pleaded.

On November 16th, 1895, appellee filed its first supplemental petition. This was subsequently amended on the 16th day of January, 1896. The amended supplemental petition consisted of demurrers and appeal plea, setting up—

1. That the money borrowed by the railroad company constituted a part of the special school fund of the State of Texas, which had been previously appropriated as a permanent fund for the support of the public free schools, and that to permit these payments in worthless warrants, or anything else than money, would be a diversion of that school fund, and was therefore in contravention of Sec. 2, Art. X, of the Constitution of 1845, and as amended in 1861.

2. That the treasury warrants so issued were issued for the purpose of being circulated as money, and that they were so circulated and used by the State officers; that they were there-

fore void because in contravention of Sec. 8, Art. VII, of the Constitution of the State of Texas then in existence.

3. Because the said warrants so issued constituted bills of credit, within the meaning of Section 10, Article I, of the Constitution of the United States; and they were therefore void because said section of the Constitution prohibited their issuance by the States.

4. Because the acts of the Legislature authorizing the issuance of said treasury warrants, and the history of the times, show that they were issued for the purpose of aiding the then authorities of the State of Texas in prosecuting a war and rebellion against the government of the United States; and that they were issued for the purpose of aiding the State in prosecuting said war and rebellion.

5. Because the people in the Constitutional Convention, assembled in 1866, by ordinance, declared all said warrants in which said pretended payments were made, to be utterly void and of no effect. And further, because Article XII, Section 36, of the Constitution of 1869, reiterated and repeated the same declaration.

6. That said warrants in which said payments were made were utterly worthless.

7. That said payments had been disallowed in 1870 by the then officers of the State, of which defendant had ample notice.

Plaintiff prayed that no credit be allowed by reason of the payments in said warrants, and if allowed, that they be allowed only to the extent of the market value of said warrants when paid to the State. (Tr., p.)

On the 16th of November, 1895, defendant filed his application, accompanied by bond, for the removal of the cause into the Circuit Court of the United States for the Western District of Texas, alleging in substance that the cause of action was one arising under the Constitution and laws of the United States. The application was denied. (Tr., p.)

All of the demurrers were overruled by the court, the case tried, and resulted in a judgment for the plaintiff for the sum of $673,109.56, together with all costs of suit, and with a foreclosure of the lien mentioned in the petition, upon all of the property of the defendant. (Tr., p.)

STATEMENT OF UNCONTESTED FACTS.

As is shown by the statement of uncontested facts in appellant's brief, the following facts were established on the trial of the case:

1st. It was admitted by the defendant that the State of Texas made to the Houston and Texas Central Railway Company, and to the Washington County Railroad Company respectively, under the provisions of the act entitled "An act to provide for the investment of the special school fund in bonds of railroads incorporated by the State," and approved August 13th, 1856, loans in the amount, and at the dates set forth in plaintiff's original petition, and that said companies executed and delivered to the State of Texas on the dates and in the amounts set forth in said petition, the bonds described in the petition, in consideration of said loans.

2nd. It was admitted also that on or about the 15th day of August, 1870, the Washington County Railroad Company became consolidated with and merged into the Houston and Texas Central Railway Company, and that the said Houston and Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railroad Company. (Tr., pp. .)

3rd. It was also shown that the appellant, the Houston and Texas Central Railroad Company, was incorporated under the general laws of the State of Texas by filing articles of incorporation in the office of the Secretary of State on the 1st day of August, 1889, by F. P. Olcott and his associates, the purchasers of the railroad and corporate rights and franchises of the Houston and Texas Central Railway Company, including the Washington County Railroad, at the judicial sale thereof. (Tr., pp. .)

4th. It was also admitted in connection with the introduction of the articles of incorporation of the defendant company that said company has been organized and existing under and by virtue of such articles of incorporation now and at the time of the institution of this suit, was in possession and claiming by proper deeds of conveyance from F. P. Olcott, and on such

charter owned and operated the railroad and property described in plaintiff's original petition.

5th. It was also admitted by defendant in open court that all payments made on account of the loan to the Washington County Railroad Company after that company was merged into the Houston and Texas Central Railway Company in 1870, up to the time that such payments on account of the loan to the Washington County Railroad Company were discontinued in 1879, were made by the Houston and Texas Central Railroad Company, and that all payments on account of the loan to the Houston and Texas Central Railway Company that were made after February, 1885, and prior to April, 1893, were made by the receiver of the property and affairs of said railway company; and that all the payments on account of said loan paid subsequent to April 1st, 1893, were made by the Houston and Texas Central Railroad Company, the defendant in this case.

6th. It was shown, as stated by appellant in his brief, that the payments made in the treasury warrants as averred by it, were aocepted by the comptroller and treasurer of the State, and that credit was at the time duly given by the comptroller on the books of his department; but in that connection it should be stated that said credits were soon thereafter repudiated, and that the State authorities have never since admitted that they were proper credits, but on the contrary have insisted that said payments were void, and should be disregarded. (Tr., p. .)

7th. It was also shown that the Washington County Railroad Company had no officers, and no one upon whom service could be had. (Tr., p. 230.)

8th. It was also shown that all of the property of the Washington County Railroad Company after it had been merged into the Houston and Texas Central Railway Company in 1870, was operated by the latter company until its property and affairs had passed into the hands of a receiver in 1885; and it was operated by said receivers until April 10th, 1893, and passed with the other lines of the Houston and Texas Central Railway Company to F. P. Olcott, by a foreclosure sale in 1888, and from Olcott to this defendant, organized and incor-

porated under articles of incorporation filed August 1st, 1889. (Tr., p. .)

9th. It was also proven that the governor had given authority to the attorney general to institute this suit. (Tr. p. .)

The defendant in the court below pleaded various payments in cash and also certain payments made in treasury warrants alleged to have been issued by the State of Texas. The facts charged in the original petition, that is to say the lending of the money and the execution of the bonds, were admitted by the defendant. (See Rec. p. .)

There was no contest made over the cash payments and indeed there was no contest over the fact of the delivery of the treasury warrants to the proper officers of the State, as alleged in the defendant's answer, but the State by a supplemental petition charged that these warrants were void for various reasons.

FIRST, *Because issued for the purpose of being circulated as money in contravention of Section 8, Article VII, of the State Constitution of 1845. So much thereof as is applicable reads as follows:*

"And in no case shall the Legislature have the power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money." (Sayles' Texas Statutes, Vol. 4, p. 208.)

In 1861, in the effort to make secession successful, the State Constitution was amended so as to conform to the general purpose manifested by the secession convention. In this Constitution, however, Section 8, Article VII, was carried forward without any change. The portion of the section in point of the Constitution as amended in 1861 reads as follows:

"And in no case shall the Legislature have the power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money." (Sayles' Texas Statutes, Vol. 4, p. 245.)

SECOND, *Because they were bills of credit, prohibited by Section 10, Article 1, of the Federal Constitution.*

THIRD, *Because they were issued in aid of the rebellion.*

FOURTH, *Because the railroads were enabled to purchase them*

in the market for a nominal, insignificant and trifling sum, and sought to compel the State to take them at par.

That as soon as peace was restored, the acceptance of these depreciated warrants in payment of debts justly owing by the railroad companies was immediately repudiated by the lawful officers of the State of Texas, and that ever since said date of said repudiation the State has maintained that said payments were illegal and unlawful, of which said fact the defendant company had ample and abundant notice.

On the filing of this supplemental petition, or soon thereafter, the defendant company filed a motion to remove the cause to the Federal Court, accompanied by proper bond. The motion was denied. (Record, p. ——.) Trial resulted in a judgment for the plaintiff in the sum of six hundred seventy-three thousand one hundred and nine dollars and fifty-six cents ($673,109.56), and a foreclosure of the lien on the property of the railroad company. The plaintiff in error company perfected an appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas. The case was by that court reformed and affirmed. The Court of Civil Appeals found as a fact that the warrants in which the payments were made were issued during the war and for the purpose of being circulated as money. That tribunal also found that as a matter of law they were void because issued in violation of Section 8, Article VII, of the State Constitution which prohibited warrants being issued for that purpose. That therefore it must be judicially treated as if no warrants had ever been issued at all because a void warrant was equivalent to no warrant, and therefore no warrants were ever paid to the State because void warrants cannot be given any validity. The portion of the opinion of the Court of Civil Appeals dealing with this subject reads as follows:

"The second, and principal question which arises is whether the payments made by the railway company in State treasury warrants are valid and binding upon the State. This question presents really the only controversy between the parties. Section 8, Article 7, of the Constitution of 1845 states that in no case shall the legislature have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money. The warrants which were

paid upon the obligations due the State were issued under acts of the legislature of the State when that provision of the Constitution was in force. The various acts of the legislature of the State during the period of the war concerning the State revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used, and the amount for which they could be issued, together with the size, shape and color of the warrants issued, and the small amounts in which warrants were issued, together with the history of the times and the well known depleted condition of the treasury during that period, together with the scarcity of existing, reliable and available circulating medium as money, convinces us that it was the purpose of the various acts of the legislature during that time to give to the warrants issued during that period, as much as possible, a standing and character as money. The scarcity of money and the necessities of the State and the public were evidently inducements to the legislature sitting during this period to provide uses to which warrants might be put in the way of requiring State officers and authorizing railways to receive them in payment of debts due them. The evident purpose was to give to the warrants in certain instances a debt-paying power in order that they might be given an advanced value and might be used in some respects as money. When the warrants were issued it was not expected and intended that they would be immediately paid, for the State was not then in a condition to pay them, nor was the intention solely that they should serve the legal purpose of evidences of debt against the State. But the character of legislation during the period during the war clearly indicates that the purpose was to give to these warrants the added quality of money as far as it lay in the power of the legislature to accomplish that result. To set out all the acts of the legislature bearing upon this subject, together with all the facts which we have considered in connection therewith, with the well known matters of history relating thereto would unnecessarily prolong this opinion. Therefore, we close this branch of the case with the statement that *in our opinion the warrants of the State issued during the period of the war, after January 1, 1862, were intended to be used* and circulated as money, and in this connection it is well to say that we are of the opinion from all there is shown from the record that the payments made by the railway companies upon the obligations sued upon were in warrants issued *after the time we have declared they were intended to circulate as money.* What is said in this connection relieves us from passing upon the interesting questions upon the burden of proof with reference to the alleged payments." (40 S. W. Rep., 1099-1101.)

A writ of error was applied for to the Supreme Court of the State and was refused, and the case was brought to this court by writ of error.

The State of Texas, defendant in error, now therefore, moves this court to dismiss the writ of error for the reason that this court is without jurisdiction to try and determine this cause.

It also prays that notice of this motion be served upon Mr. Joseph Paxton Blair, who resides in the city of New Orleans, State of Louisiana, and Mr. Jas. A. Baker and Mr. R. S. Lovett who reside in the city of Houston, Harris County, Texas, all of whom are counsel of record for the plaintiffs in error in this cause.

M. M. CRANE, Attorney-General,
Counsel for Defendant in Error.

BRIEF AND ARGUMENT ON THE ABOVE MOTION.

FIRST PROPOSITION.

The statement of the plaintiff's claim or cause of action in the original petition disclosing no Federal question, the cause was not removable to the Federal Court.

Statement.—Plaintiff's statement of its cause of action is contained in the original petition. The petition discloses that it was an action for debt created by the lending of money to the railroad companies therein named, which indebtedness was evidenced by bonds fully described therein and to secure which a lien was given upon the property therein described. It was simply a foreclosure proceeding without even the suggestion, remote or otherwise, of a Federal question.

Authorities:

Tennessee vs. Bank, 152 U. S., 464.
Chappell vs. Water-works, 155 U. S., 102.
P. T. C. Company vs. Alabama, 155 U. S., 487.
East Lake Company vs. Brown, 155 U. S., 488.

ARGUMENT.

The Texas courts require the cause of action to be stated in the original petition, or in the amended original petition. De-

fensive matters pleaded by the plaintiff are contained in supplemental petitions. A supplemental petition is, in the strictest sense, a replication, as the following rules prescribed by the Supreme Court of the State, will disclose:

"THE PETITION.

"3. The petition of the plaintiff shall consist of an original petition and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit, to enable the plaintiff to state all the facts presenting his cause of action, and such other facts as may be required to rebut the facts that may be set up in the original or supplemental answer, as pleaded by the defendant. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named and indorsed.

"ORIGINAL PETITION.

"4. The plaintiff, in the original petition, in addition to the names and residences of the parties and the relief sought, may state all of his facts, amounting to a cause or causes of action, as has been the usual practice; or he may state the cause or causes of action in several different counts, each within itself presenting a combination of facts specifically amounting to a single cause of action, which, when so drawn, shall be numbered, so that an issue may be formed on each one by the answer.

"PLAINTIFF'S SUPPLEMENTAL PETITION.

"5. The plaintiff's supplemental petitions may contain exceptions, general denial and the allegations of new facts not before alleged by him, in reply to those which have been alleged by the defendant." (Rules 3, 4 and 5, 47 Texas, 616.)

These rules are recognized in the following authorities:

Grabenheimer vs. Blum, 63 Texas, 369-373.
Insurance Company vs. Camp, 64 Texas, 521-525.

An analysis of the above rules will show that every allegation necessary to support a judgment or decree in favor of the State must be made in the original petition. It will be seen that the original petition in this case complied with those rules. If the defendant company had plead only a general denial a judgment would have been obtained against it by proving the statements made in the petition. To avoid the case thus made it became necessary for the defendant company to specially plead payment.

Cartright vs. Jones, 13 Texas, 4.
Gray vs. McFarland, 29 Texas, 169.

This rule the defendant company recognized and pleading payments, it assumed the burden of proving them. Plaintiff's supplemental petition was a reply to this plea of payments. It could not be said to contain in any sense a statement of the plaintiff's claim or cause of action. Indeed, the claim or cause of action, as stated in the original petition was admitted on the trial, the admission being in the following language:

"It is admitted by the defendant that the State of Texas made to the Houston and Texas Central Railway Company, under the provisions of an act, entitled 'An act to provide for the investment of the special school fund in bonds of railroads incorporated by the State' approved August 13, 1856, a loan on the dates and in the amounts set forth in the *plaintiff's original petition* and that the said companies executed and delivered to the State of Texas on the dates and in the amounts set forth in the petition the bonds described in the petition in consideration of said loan." (Rec., p. .)

It was also admitted that on or before the 15th day of August, 1870, the Washington County Railroad Company became consolidated and merged with the Houston and Texas Central Railway Company and that said Houston and Texas Central Railway Company thereafter held possession of and claimed the property which had theretofore belonged to the Washington County Railroad Company. (Rec., p. .)

The bonds, the execution and delivery of which were charged

in said petition, expressly acknowledged the existence of the lien created by the legislature to secure the payments of the loans made thereunder. It is plain that the supplemental petition was in the strictest sense a reply to the defense pleaded and contained no part of the statement of plaintiff's claim or cause of action. There was, therefore, no error in denying the motion to remove.

It will be noted that the Court of Civil Appeals based its decision upon one question of fact and one question of law. It found as a fact that the warrants in which the payments were made were issued during the war and intended to be circulated as money. I understand that decision to be conclusive upon this court.

Egan vs. Hart, 165 U. S., 563.
Bacchus vs. Fourth Street Ry. Co., 159 U. S., 653.
Holloway vs. Dunham, 18 Sup. Ct. Rep., 784.
Harrison vs. Perea, 168 U. S., 311.

The State court also decided that the issuance of these warrants for the purpose of being circulated as money was prohibited by the section of the State Constitution which I have set out in the statement of the case. The State courts having determined that these warrants were void because issued in violation of the State Constitution, and that payments made in them were therefore void, the decision of the Federal question would be wholly immaterial because the question of payment was the only one in the case. This court has said that in a case in a State court where two grounds of defense are interposed, each broad enough to defeat a recovery, and only one of them involves a Federal question and judgment passes for the defendant, the record must show, in order to justify a writ of error from this court, that the judgment was rested upon a decision of the Federal question, and that if this does not affirmatively appear the writ of error will be dismissed.

Johnson vs. Risk, 137 U. S., 300.
Murray vs. Charlestown, 96 U. S., 432.
Jenkins vs. Lowenthal, 110 U. S., 222.

Hale vs. Akers, 132 U. S., 552.
Beaupre vs. Noyes, 138 U. S., 397-401.
New Orleans Waterworks vs. La. Sugar Refining Co., 125 U. S., 18.
Knight vs. Shelby Ry. Co., 125 U. S., 39.
Bacon & Graves vs. State of Texas, 163 U. S., 207.
Eustis vs. Bowles, 160 U. S., 361.
N. E. & N. Y. Ry. Co. vs. Wood Mfg. Co., 163 U. S., 689.
Hammond vs. Ins. Co., 160 U. S., 633.

This rule will be adhered to although this court may believe that the decision of the Federal question by the State court was erroneous.

Klinger vs. Missouri, 13 Wall., 257.

An examination of the decision of the Court of Civil Appeals will disclose that there was no Federal question decided. It was unnecessary to decide the Federal question and the decision was wholly based upon an intepretation of a provision of the State Constitution and the Texas statutes which indicated the purpose of the legislature in issuing these treasury notes.

The decision of the State courts in construing its own statutes and Constitution is not open for review in this court.

Long Island Water Supply Co. vs. Brooklyn, 166 U. S., 685.
Merchant's and Manufacturer's Bank vs. Penn, 167 U. S., 687.
Bacchus vs. Fourth Street Depot Co., 169 U. S., 566.
Chicago, Etc., Railway Co. vs. Minnesota, 134 U. S., 460.

It is respectfully submitted that the motion to dismiss the writ of error ought to be granted for the reason that this court is without jurisdiction.

M. M. Crane,
Attorney General.
Attorney for Defendant in Error.

We hereby waive issuance and service of notice of this mo-

tion and agree that this memorandum may be accepted as a complete substitute therefor.

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Attorneys for Plaintiffs in Error.

[NOTE:--The pages of the record above referred to have been left blank for the reason that copy of printed record has not been furnished me.]